

PENERAPAN ASAS *RES IPSA LOQUITUR* PADA PERKARA MALPRAKTIK MEDIK DI INDONESIA

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ABSTRACT

The application of the *res ipsa loquitur* principle in medical malpractice cases in Indonesia is very rare. It is due to limited number of medical malpractice cases which are settled in court; besides, the principle itself is not yet widely known by the judges. The *res ipsa loquitur* even still constitutes a discourse in Indonesia. However, there is no difficulty in applying this principle into the settlement of the medical malpractice cases in court. Because the *res ipsa loquitur* principle has not yet been accommodated by the Indonesian criminal procedures, it can be considered as doctrine and doctrine is one of the recognized-sources of law in Indonesian legal system. Judges may refer to doctrines when they fail to find the new law from legislations. As a doctrine, *res ipsa loquitur* principle is very important for developing the medical law in Indonesia, especially law related with procedural aspect. It is also useful for developing the Indonesian law of evidence.

Keywords: Medical Malpractice, Law of Evidence, *Res Ipsa Loquitur*

A. PENDAHULUAN

Akhir-akhir ini terasa ada gejala kemerosotan kepercayaan dari kalangan awam terhadap profesi kedokteran. Hal tersebut dipicu dengan semakin banyaknya kasus-kasus malpraktek medik yang diangkat ke permukaan, baik melalui media cetak maupun media elektronik.

Malpraktek medik menjadi topik yang selalu hangat untuk dibicarakan. Banyak sisi yang menarik dari kasus malpraktek medik yang dapat dicermati. Mulai dari nasib pasien yang selalu menjadi pihak yang lemah, pelaku malpraktek medik yang sering luput dari jeratan hukum hingga belum adanya lembaga yang menangani persoalan malpraktek medik secara komprehensif.